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ABSTRACT

This handbook for Virginia parents of children with disabilities describes the special education process and what is required of parents and the school during each step of the process. The first section briefly describes major provisions of Public Law 94-142, the Education for All Handicapped Children Act; Virginia law; and Section 504 of the Rehabilitation Act of 1973. Definitions of key terms under the law ("handicapped children," "special education," "related services," "free appropriate public education," "parent," and "surrogate parent") are then offered. The special education process is then described through the following steps: (1) identification of children with suspected handicaps; (2) referral-the Child Study Committee; (3) assessment procedures; (4) independent evaluation; (5) eligibility; (6) the Individualized Education Program; (7) placement and service delivery; (8) monitoring the child's progress; (9) removal from special education; (10) written notice and parental consent; (11) disciplining the handicapped student; (12) resolving problems through the complaint procedure; and (13) resolving conflict through a due process hearing. Appendices include a list of state resources, the special education cycle and timeline, and a glossary. (DB)

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A Parent's Guide to Special Education

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Virginia Department of Education

Division of Early Childhood Education

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A Parent's Guide to Special Education

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Virginia Department of Education

Division of Early Childhood Education

P.O. Box 6-Q

Richmond, Virginia 23216

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Preface

Parents play an important role in the education of their children, especially parents of children who are suspected of or identified as being handicapped. Federal and state regulations require that parents be involved in specific areas of the development of an educational program for their children. Many actions also require parental permission. To be active in the educational planning process, parents need to understand their rights and responsibilities and the rights of their children.

This handbook was developed by the Virginia Department of Education to help parents understand the process of getting appropriate educational services for their children. The handbook includes a description of the special education process and what is required of the parents and the school division during each step of that process. Important timelines in the process are highlighted throughout the handbook.

Throughout the process, parents and school division personnel work together to provide children with an appropriate education. Parents should be active in the development of a program for their children, should ask questions, and should ask for help when they feel that they need it.

This handbook is not a substitute for the *Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia*. Copies of these regulations and this handbook are available at no cost from:

Virginia Department of Education
Division of Early Childhood Education
P. O. Box 6-Q
Richmond, Virginia 23216-2060
1-800-422-2083 (Voice)
1-800-422-1098 (TDD)

Braille copies, audio tapes and large print versions are available upon request.

Public Law 94-142

During the early 1970s, Congress studied the need for a national policy for the education of handicapped children. In response to the study, the Education for All Handicapped Children Act of 1975 (Public Law 94-142) was signed into law.

The Act provides for the following:

All handicapped children in the United States have available to them a free appropriate public education.

Handicapped children must be educated in the least restrictive environment, based on their individual needs.

The rights of handicapped children and their parents are protected.

The federal government will provide some financial assistance to state and local school districts to help them carry out the requirements of the Act.

Virginia Law

Virginia has a history of funding and providing special education programs for handicapped children and youth. In 1968, the first legislation to require special education for certain handicapped children was passed. In 1972 the legislation was expanded to include all handicapped children ages 2 through 21.

The legal provisions regarding special education in Virginia are contained in the *Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia* and the *Code of Virginia.*

Section 504 of the Rehabilitation Act of 1973

In addition to Public Law 94-142, there is another federal law that gives rights to handicapped children. Section 504 of the Rehabilitation Act of 1973 sets forth these civil rights of persons with handicaps. It prohibits discrimination on the basis of handicap in any program or activity receiving federal funding. Section 504 covers discrimination in many areas, including education.

Section 504 protects the rights of qualified handicapped persons. Under Section 504, a handicapped child means any child who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. To be qualified to receive services under Section 504, a handicapped child must fall into one of the following categories:

nonhandicapped children of the same age as the handicapped child are receiving services;

the state is required by law to provide services to a handicapped child that age;

the state is required to provide a free appropriate public education to that child under Public Law 94-142.

The Section 504 regulations require a school division that receives federal funds to provide a free appropriate public education to each qualified handicapped person in the division, regardless of the nature and severity of their handicap. An appropriate education may consist of education in regular classes, education in regular classes with the use of supplementary aids, or special education and/or related services.

Definitions Under PL 94-142

Handicapped Children

A handicapped child is a child who has been properly tested under state and federal law and found to have one of the following handicapping conditions:

autistic	orthopedically impaired
deaf	other health impaired
deaf-blind	seriously emotionally disturbed
developmentally delayed	severely and profoundly handicapped
hearing impaired	specific learning disability
mentally retarded	speech or language impaired
multihandicapped	visually impaired

Definitions of these handicapping conditions are included in the glossary of this document and in the Virginia special education regulations.

Special Education

Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child. The term includes classroom instruction, instruction in physical education, instruction in vocational education, home instruction, and instruction in hospitals and institutions. It also includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the individual educational needs of the child.

"At no cost" means that all specially designed instruction is provided without charge. Fees, such as student activity fees, which are charged to nonhandicapped students or their parents as part of the regular educational program may be charged to handicapped children or their parents.

"Physical education" means the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, individual and group games, and sports. The term includes adaptive physical education, movement education, and motor development.

"Vocational education" means organized educational programs which are designed to prepare individuals for paid or unpaid employment, or for additional preparation for a career which does not require an advanced degree.

Related Services

Related services are services which are necessary to help a handicapped child benefit from special education. The term includes the following:

audiology

counseling services

medical services required for diagnostic and evaluation purposes (the provision of medical treatment is not a related service)

parent counseling and training

physical and occupational therapy

psychological services

recreation

school health services

speech and language therapy

transportation

other programs determined to be necessary for a handicapped child to benefit from special education

Free Appropriate Public Education

The law requires that a free appropriate public education be available to all identified handicapped children and youth in Virginia, ages 2 through 21 inclusive, who have not graduated from a secondary school or finished a program approved by the Board of Education.

"Free appropriate public education" means special education and related services which:

are provided at no cost to the parent;

meet the standards of the Board of Education;

meet the individual needs of a handicapped child;

include preschool, elementary school , middle school, or secondary school, and/or vocational education;

are provided in accordance with an individualized education program; and

are provided in a public school, or in a private school at public expense, with public supervision and direction when a public school program is not appropriate or is not available.

Parent

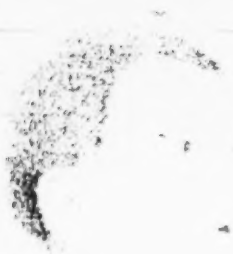
"Parent" means a parent, a guardian, or a person acting as a parent of a child. The term means either parent, unless the school division has been informed that there is a legal document or a state law or order governing custody of the child.

The term also includes persons acting in the place of a parent, such as a grandmother or stepparent with whom the child lives, as well as the persons who are legally responsible for a child's welfare.

Surrogate Parent

If a parent cannot be located or identified after reasonable efforts, or the child is a ward of the state, a surrogate parent is appointed pursuant to the state special education regulations. The surrogate parent has all the rights of a parent in matters relating to the identification, evaluation, or educational placement of the child and the provision of a free appropriate public education to the child.

I. Identification of Children with Suspected Handicaps



The responsibility to find and identify those children and youth in Virginia, birth to age 21, inclusive, who may need special education and related services is shared by many people. Identification comes from parents, state and local agency professionals,

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school principals and teachers, doctors and social workers, and other community workers.

Anyone who suspects that a child needs these services should notify either the school principal, the principal's designee, or the person identified by the school division as the person to receive such referrals.

This referral can be made verbally or in writing and should include, where possible, the child's name and birthdate, the current grade, the classroom teacher's name, and any other information which supports the child's need for services.

II. Referral - Child Study Committee

A formal Child Study Committee is located in each school. This committee reviews records, information contained in the referral, and other materials that include records of the performance of a child who has been referred.

The committee is composed of the following people:

the principal or designee

teachers

specialists

the person who referred the child (except where it would breach the confidentiality of the child).

Timeline

The committee must meet within *10 administrative working days* (days other than Saturday, Sunday, and official holidays) of referral to the principal.

The school division does not need permission from the parents before the Child Study Committee meets to discuss the child. Parents should, however, maintain lines of communication with teachers and the principal so that they can contribute important information to the members of the committee. Actions taken by the committee must be documented in writing and include information upon which any decisions are made.

The committee will review data, decide if additional information is needed, and develop a plan to help the child within the child's regular classroom. Sometimes, the committee may find that the initial reason the child was referred causes the committee to suspect the child may require special education. In this case, the committee will immediately make written recommendation for formal assessment to the special education administrator without suggesting alternative methods in the classroom.

If the use of alternative methods in the regular classroom is suggested, the committee should set a timeline for trying the alternative methods. Once those methods are tried, the committee will meet again. If the alternative methods met the needs of the child, the committee may decide that no further action is needed. If the committee feels that the alternative methods were not enough, however, they will make a formal recommendation in writing to the special education administrator.

Timeline

Referral must be made to the special education administrator within *5 administrative working days* following the determination by the child study committee that the child is suspected of being handicapped. The referral must include the information used by the committee in making its decision.

The special education administrator will then notify parents in writing that the Child Study Committee suspects the child is handicapped and that it is necessary for the school division to do a formal assessment of the child. This notice must be in the parent's native language. The notice must include:

a description and an explanation of the action proposed by the school division;

the other options the school division considered and the reasons why these options were not used;

the parent's procedural rights; and

a general description of the kinds of tests and other procedures which will be used in the evaluation.

The parent must understand and give the school written permission before the assessment can begin.

III. Assessment Procedures

If the parent agrees to an assessment, a team of people will begin the process. "Assessment" or "evaluation" means the testing and observation used to gather more information about the child and his/her learning needs. An assessment may include observation of the child, testing of the child, examining the child's previous records, and interviews with the child, parents, and others who know the child. Assessments must be conducted by people who meet state certification requirements.

All children who are suspected of being handicapped must have the following assessments:

Educational — The educational evaluation will inform the parent and the professionals about the child's present abilities and achievement, and identify any problems the child has in learning;

Medical — The medical examination must be performed by a licensed physician. The doctor will review the child's medical history, examine the child, and make an assessment of whether the child has a medical condition which may affect his/her learning;

Sociocultural — The sociocultural evaluation involves an interview with a school social worker or a visiting teacher. It includes information about the child in the home, as well as school and community factors, which may affect his/her performance in school;

Psychological — The psychological evaluation must be conducted by a qualified psychologist. The evaluation will inform the parents, the psychologist and the school personnel about the child's intellectual, emotional and social development. It may also indicate how the child relates to other people.

In addition to these four assessments, the child must be assessed in other areas if they relate to his/her suspected disability. These areas may include speech, language, and motor abilities. For students suspected of being learning disabled (LD), there must be a classroom observation by at least one team member who is knowledgeable about LD, other than the child's teacher.

Parents should note:

Specially designed tests should be used for children who are blind, deaf, or speak a different language;

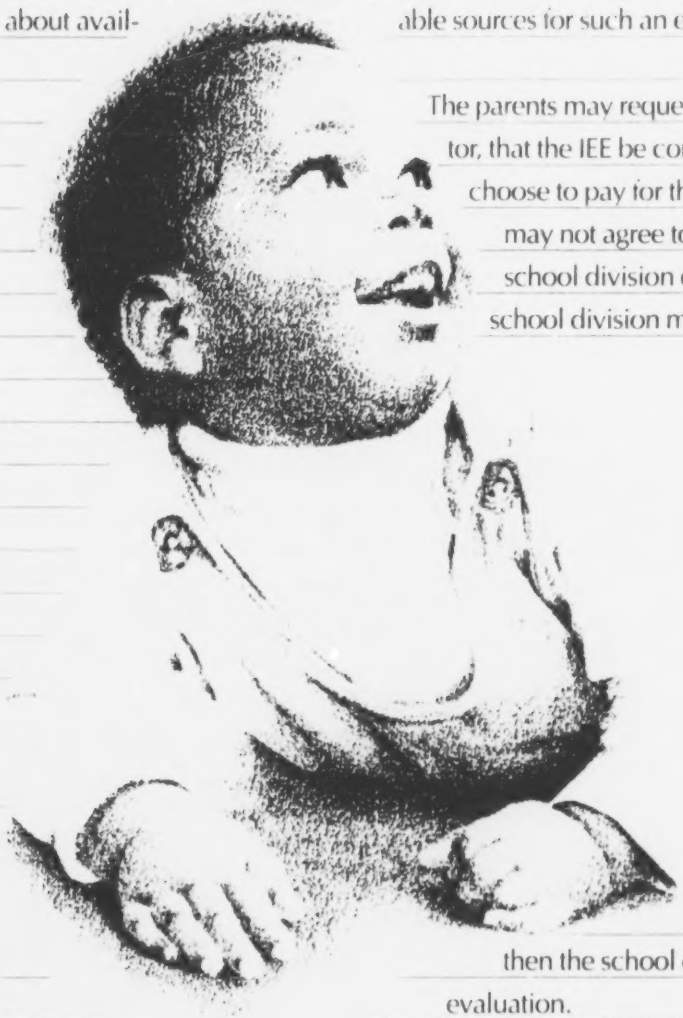
The people giving tests must follow the directions written by the developers of the test;

No single test can be used as the only criterion for determining eligibility for services.

When the assessment process is complete, the parent has the right to see the information collected, to examine all reports, and, upon request, to have this information explained.

IV. Independent Evaluation

If the parent disagrees with the results of an evaluation, the parent may wish to obtain an independent evaluation (sometimes called an "IEE"). An independent evaluation is conducted by a qualified person(s) who is not affiliated with the school division. The school division must provide parents with information about available sources for such an evaluation.



The parents may request, through the special education administrator, that the IEE be conducted at public expense or the parents may choose to pay for the IEE themselves. The school division may or may not agree to pay for an independent evaluation. If the school division does not agree to pay for the evaluation, the school division must request a due process hearing to show that its evaluation is appropriate. If the hearing officer believes that the school division's evaluation was appropriate, the parent will pay for the independent evaluation. If the hearing officer finds that the school division's evaluation was not appropriate or was inadequate, then the school division must pay for the independent evaluation.

Even if the parents pay for an independent evaluation, the school division must still consider the results of the evaluation in its decision about the child's education.

V. Eligibility

Once the assessments are completed, an eligibility committee reviews the information and determines whether the child is eligible to receive special education and/or related services. The Eligibility Committee must include:

school division personnel who represent each of the areas that were assessed (at least one must have actually as-sessed or ob-served the child);

the special education administrator, or designee.

School divisions may allow parents to attend the eligibility committee meeting, but they are not required to include parents in this meeting.

Timeline

Eligibility for special education and related services must be determined within *65 administrative working days* after the Child Study Committee requested the evaluation.

The parent will be notified of the eligibility committee's determination. If the parents disagree with these findings, they may choose to request a Due Process Hearing (see table of contents).

VI. Individualized Education Program

If a child is found eligible for special education and/or related services, the next step in the process is the development of an Individualized Education Program, or IEP, for the child. The IEP is a written plan that specifies what special education or related services the child will receive so that the individual needs of that child are met.

Timeline

An IEP must be developed within *30 calendar days* of the decision that a child needs special education and/or related services (the eligibility determination).

An IEP must be developed before a child receives special education and/or related services and the services must start as soon as possible following the date the IEP was developed.

Who Attends the IEP Planning Meeting?

The IEP Committee must include the following people:

a representative of the school division, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

the child's teacher;

one or both of the child's parents;

the child, when appropriate;

other individuals at the choice of the parent or the school division.

If the child is being considered for special education for the first time, the school division must have one of the following present at the meeting:

a member of the evaluation team; or

a representative of the school division, the child's teacher, or some other person who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

What is the Parent's Role in the IEP Committee Meeting?

The parents are members of the IEP Committee and are equal participants with others involved in planning the child's IEP. The school division must notify the parents of the IEP Committee meeting early enough to give the parents an opportunity to attend, and early enough to schedule the meeting at a time and place convenient to both the school and the parent. The notice must include the purpose of the meeting, the proposed time and location of the meeting, and the names of persons who will attend.

If neither parent can attend the IEP Committee meeting, the school division must try to include the parents in the planning process in other ways such as individual or conference telephone calls. An IEP committee meeting may be held if the parents choose not to attend. The school division must keep a record of its attempts to involve the parents.

If the parents do attend, the school division must assure that the parents understand what happens at the meeting. This may include arranging an interpreter for parents who do not speak English or who are hearing impaired.

Once an IEP is written, the school division must give or send the parents a copy.

What Must be Included in the IEP?

The required parts of an IEP are:

A statement of the child's present level of performance;

A statement of the annual goals for the child;

A statement of short-term instructional objectives to help the child achieve the annual goals;

A statement of the specific education services and related services which will be provided to the child;

A statement describing how much the child will participate in regular education programs;

The date services are to begin and end; and

Objective criteria, and the methods and timelines used to evaluate the child's progress.

The statement of the child's present level of performance includes a description of the effect of the child's handicapping condition on his or her educational performance. The statement should also include what the child can and cannot do in both academic and nonacademic areas such as: academic achievement, hearing, vision, speech and language, social behavior, emotional behavior, motor skills, and self-help skills.

The annual goals must state what the child is reasonably expected to be able to do within one year. An example of an annual goal for self-help skills might be: "Mary will independently dress herself by June."

The short-term instructional objectives are the steps that the child must achieve in order to meet each annual goal. An example of some short-term objectives for Mary's self-help annual goal might be: "Mary will independently perform buttoning and unbuttoning of clothing by October;" "Mary will independently perform tying and untying shoes by March."

Parents should note that well-written goals and objectives answer five questions:

Who will achieve the goal or objective?

What skill or behavior is to be achieved?

How and at what level will it be achieved?

Where will it be achieved?

When will it be achieved?

The objective criteria and evaluation procedures address how and when the child's progress will be measured. Criteria may include testing, observation of the child, student's classwork and homework, or a teacher checklist. An example of the evaluation method for Mary's short-term objective of tying and untying shoes might be "90 percent of the time (or two out of three tries) for three consecutive days based on teacher observation."

In Virginia, the IEP must also address how the child will participate in Family Life Education, the Literacy Testing Program, and the Virginia State Assessment Program.

In addition to the required parts of an IEP, parents should remember that if a child needs accommodations for taking tests, those accommodations must be included in the IEP. Parents who believe their child may need accommodations should request a copy of guidelines on test-taking accommodations for handicapped students from the local school division or the Virginia Department of Education.

Other accommodations and modifications which help the child to function in a regular education classroom should also be addressed. Such accommodations might include, but are not limited to interpreter services, seating at the front of the room, large print textbooks, using a tape recorder or receiving assistance with note-taking.

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VII. Placement and Service Delivery

Once a child's IEP is developed, the next step is to determine where the child will receive the services outlined in the IEP. The placement decision is made by the IEP Committee only after the annual goals and short-term objectives have been decided. The child's placement must be based on the goals and objectives in the child's IEP.

Placement must be as close as possible to the child's home. The child must be educated in the school which the child would attend if not handicapped unless the IEP indicates that another placement is appropriate. The school division is required to provide or pay for the child's transportation to and from a placement proposed by the IEP Committee.

Every school division must provide a continuum of alternative placements so that every handicapped child will have an appropriate program. This continuum includes:

regular classes

regular classes with supportive services

special classes [resource (less than 50% of time) or self-contained (more than 50% of time)]

special day schools

hospital/home services

residential schools.

When making the placement decision, the IEP Committee must consider the least restrictive environment (LRE) for the child. Handicapped children must be educated with nonhandicapped children to the maximum extent appropriate for each child. A child must not be placed in special classes or separate schools unless education in regular classes with aids and services cannot be achieved satisfactorily.

The least restrictive environment requirement applies not only to academics but to nonacademic and extracurricular activities as well. Regardless of placement, the child must be given a chance to participate with nonhandicapped students in nonacademic and extracurricular activities such as lunch, music, physical education, clubs and assemblies as appropriate for the child.

VIII. Monitoring the Child's Progress

Review of the IEP

Usually the IEP describes the educational program for a child for a single school year. The IEP can, however, be written to provide services for any length of time as long as it is not greater than one calendar year. The IEP must be reviewed at least once a year. If either the parents or the school division believe the child's needs have changed, or all or some of the IEP is no longer appropriate, an IEP Committee meeting should be held to revise the IEP.

The child's placement must also be considered at the IEP review meeting.

Reevaluation

The school division must perform a comprehensive evaluation every three years to determine if the child still requires special education services and what those services are. This reevaluation is called a "triennial

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evaluation." The school division does not have to have the parents' written consent before conducting a triennial evaluation but the school division must notify the parent that the triennial evaluation is going to occur.

If the parents or the teacher believe that the child needs a reevaluation before three years, the school division must evaluate the child. The parents' written consent is required for a reevaluation other than the triennial evaluation. However, the school division does not need to get the parent's written consent when the school division is going to review written evaluations that already exist.

Informal Methods of Monitoring

Parents can monitor their child's progress throughout the year by using informal methods as agreed to by the parents and the school division such as:

- conferences with the child's teachers, therapists, and other service providers
- visits to the child's classroom (parents should check with the principal and teacher before visiting the child's classroom)
- notebooks shared by the parents and the teacher containing comments, suggestions and observations
- reviewing the IEP objectives periodically to make sure that they are current and amending them, if necessary

IX. Removal from Special Education

During the IEP review, an IEP Committee may decide that a child no longer needs one or more of the special education services in the IEP. Termination of some, but not all, of the special education services in the IEP may be determined by the IEP Committee with the parents' consent. If the IEP Committee believes that a child is no longer eligible for any special education services (complete termination) it will refer the child to the Eligibility Committee.

Complete termination of services occurs in one of the following situations:

The Eligibility Committee decides that the child no longer meets the eligibility criteria for special education and related services and the parents give their consent; or

The parents no longer give permission for the child to be in special education (the school division may appeal the parents' decision through the due process procedures).

X. Written Notice and Parental Consent

Notice

The parents of a handicapped child must be given written notice within a reasonable time before the school division proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of a free appropriate public education to the child. The timetable for notice varies with the individual school division.

The notice must be written in language that the parent understands. Also, the notice must be given in the parents' native language or other method of communication used by the parents.

The notice must include:

a complete explanation of all the parents' rights

a description of the action proposed or refused by the school division

an explanation of why the school division proposed or refused the action

a description of any options the school division considered and the reasons why the school division did not accept those options

a description of the nature, purpose, and use of any evaluation procedure the school division used in making its decision

a description of any other reasons why the school division proposed or refused to take action

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Consent

There are many instances when the parents must give permission before the school division can take action. The school division must get the parents' consent in writing before:

conducting evaluations before a child is first placed in a special education program (pre-placement evaluation)

placing a handicapped child in a program providing special education and related services for the first time (initial placement)

any change in program (IEP) or placement, including any partial or complete termination of special education and related services except expulsions and graduation.

Parents should note that they may revoke their permission for placement anytime before the first day the child is placed in the placement. Otherwise, they will have to request that the IEP Committee meet to reconsider the child's placement, or request a due process hearing.

The school division also must get the parents' written consent for:

any change in the identification of the child's handicapping condition

any evaluation which is conducted other than the assessments required for the triennial evaluation. (Note: parental consent is not required before school division personnel review a child's records for conducting a reevaluation)

Timeline

Except for consent for preplacement evaluation and initial placement, parents must consent or refuse to consent for those other situations requiring consent within *10 administrative working days* after the parents receive notice from the school division.

If the school division does not hear from the parents within the ten-day period, the school division may act as if the parents had given permission. If the parents disagree with the action, they may request a due process hearing.

If, within the ten-day period, the parents notify the school division that they refuse to give consent for the proposed action, the school division may request a due process hearing to decide whether the proposed action is appropriate.

In the case of pre-placement evaluation and initial placement, if the parents refuse to give permission or do not notify the school division, the school division may not evaluate or place the child. If this occurs, the school division may request a due process hearing to decide whether the child should be evaluated or placed.

XI. Disciplining the Handicapped Student

The procedures for disciplining a handicapped student are sometimes different from those used for disciplining a student in regular education.

If the school division chooses to remove a handicapped student from class (in-school suspension) or from school for ten school days or less, this is considered a short-term suspension. A short-term suspension is not considered a change in the student's placement and the student may be suspended without any further action by the school division.

A long-term suspension occurs when the school division removes the handicapped student from class or from school for more than ten school days in a row.

Before a school division can put a handicapped student on long-term suspension, or expel a handicapped student, a decision must be made as to whether or not the student's handicapping condition directly caused the misconduct. This decision is made by a committee composed of the following people:

a representative of the school division, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

the child's teacher;

one or both of the child's parents;

the child, when appropriate;

other individuals selected by the parents or the school division.

If the parents do not agree with the committee's decision, they may appeal the decision through the due process procedures.

If the committee determines that the student's handicapping condition caused the misconduct, or that the student's placement at the time of the misconduct was not appropriate, the student may not be placed on long-term suspension or be expelled.

If the committee determines that the student's handicapping condition did not cause the misconduct and that the student's placement at the time of the misconduct was appropriate, the student may be placed on long-term suspension, or expelled just like a nonhandicapped student. Parental consent is not required before the school division can expel the student.

A series of short-term suspensions equal to or more than ten days may be considered a long-term suspension and a significant change in the handicapped child's placement which would require reevaluation and procedural protections. Factors to be considered when deciding if a series of suspensions should be considered long-term suspension include:

length of each suspension

how close in time the suspensions occurred (one month apart, six months apart, etc.)

total days suspended

XII. Resolving Problems Through the Complaint Procedure

If a parent, another individual or an organization has a complaint against a school division, the organization or individual may file a signed written complaint with the compliance officer appointed by the Virginia Department of Education.

The complaint must include a statement that a school division has violated a requirement of a federal and/or state law or regulation that applies to a program. (Example: an individual registers a complaint that a school division is not providing the services that it agreed to provide in the student's IEP).

The complaint must also include a statement of facts on which the complaint is based. All documents which relate to the complaint must be sent to the compliance officer when filing the complaint.

Once a complaint is received, the compliance officer will begin an investigation to determine whether or

not the school division is in compliance with state and federal laws and regulations.

Timeline

The compliance officer has *60 calendar days* after receipt of the written complaint to investigate and resolve the complaint. A specific extension of the 60 calendar days may be granted if exceptional circumstances exist with respect to a particular complaint. If this occurs, the compliance officer will notify the person filing the complaint and the school division in writing.

The Process

1. Within seven administrative working days of the receipt of a written, signed complaint, the compliance officer will notify, in writing, the person filing the complaint, the school division which is the subject of the complaint, and appropriate Virginia Department of Education personnel that a complaint has been filed. The notice shall include:

   a copy of the complaint

   an offer of assistance in resolving the complaint

   a request for a written response to the complaint within 10 administrative working days of the date of the notice.

2. If the school division does not reply to the compliance officer within ten administrative working days, the compliance officer will send the school division a second notice. This second notice will advise the school division that if it does not respond within 7 administrative working days of the date of the notice, the complaint will be sent to the State Superintendent of Public Instruction for additional action.

3. When the compliance officer receives the response, he/she will review the complaint and reply and determine if further investigation or corrective action by the school division is needed. If no further action or investigation is needed, the compliance officer will notify the person filing the complaint and the school division, in writing, and state the grounds for the finding. If the compliance officer believes further investigation is necessary, he/she will review all documentation presented and may include an on-site investigation.

The compliance officer will decide whether the school division has or has not complied, based upon the facts and applicable laws and regulations. The compliance officer will notify the person filing the complaint and the school division of the findings and the basis for the findings. A report of any findings of noncompliance will be forwarded to the State Superintendent of Public Instruction's designee for review and, where appropriate, to the State Superintendent for further action.

4. The Superintendent of Public Instruction will notify the person filing the complaint and the school division in writing of the actions the school division must take to correct the situation. The school division will have 15 administrative working days to respond and begin the corrective action. The school division's response must include timelines to correct the violation.

5. If the school division fails to comply, the matter will be referred to the Board of Education.

6. The person filing the complaint and/or the school division may request the United States Secretary of Education to review the state's final decision.

XIII. Resolving Conflict Through a Due Process Hearing

When to Request a Due Process Hearing

If the parents and the school division cannot agree on the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education for the child by informal methods, the parents or the school division may request a due process hearing. A due process hearing may also be requested to decide whether a school division should pay for an independent educational evaluation.

If the parents request a hearing, the state special education regulations require that the request be made to the local school board. However, it is acceptable to direct a request for a due process hearing to the principal, special education coordinator, or division superintendent. A request for a due process hearing may be made orally, but it should be followed in writing and should give the reasons for the request. If the school division requests a hearing, the parents will be notified in writing.

What Happens When a Due Process Hearing is Requested?

When either the parents or the school division request a hearing, the school division must inform the parents of any free or low-cost legal services available to the parents and that, in some instances, parents may have the right to recover attorney's fees from the school division.

Within five administrative working days of a request for a hearing, the school division must request the name of an approved special education hearing officer from the Executive Secretary of the Supreme Court of Virginia and make sure that an appointment is made.

Timeline

A hearing officer must hold the hearing and reach a decision within *45 calendar days* from the receipt of a request for a hearing. A hearing officer may grant an extension of the 45 day time period if a party requests an extension.

The hearing officer, within five administrative working days of the appointment, must arrange a date, time and location for the hearing convenient to both parties. The hearing officer must provide written notification to the parties of the time, date and location of the hearing.

Hearing Rights

Both the parents and the school division involved in a due process hearing have the right to

receive advice and be represented by an attorney or an advocate and by individuals with special training and knowledge in problems with handicapped children;

ask questions of their witnesses and the other party's witnesses;

introduce evidence, such as letters, evaluations, etc.;

request the hearing officer to require the attendance of witnesses;

prohibit the introduction of any evidence which that party has not seen at least five administrative working days prior to the hearing;

receive a written or electronically recorded record of the hearing upon request and in connection with an appeal;

receive written findings of facts and the decision of the hearing officer;

appeal the decision of the hearing officer.

In addition to these rights, parents involved in a hearing also have the right to

examine the child's records and receive copies if requested (the parent may be asked to pay the school division a small cost for copying the records);

decide whether the hearing will be open to the public;

receive written notice of the hearing in their native language.

Hearing Preparation

A due process hearing may be similar to a trial. How formal it is depends on the hearing officer and whether attorneys are involved. Each party presents evidence and witnesses and asks questions of the other party's witnesses. Both the parents and the school division can choose to have an advocate or an attorney represent them at the hearing.

There are several things the parents and their attorney, if they have one, should do to prepare for a hearing. They include:

review the procedures for due process hearings in *Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia*;

define the issue(s) on which the parents and the school division cannot agree;

agree to those issues which the parents and the school division can agree;

review the child's records;

choose documents which support the parents' position in order to present exhibits at the hearing;

label each exhibit (e.g. student exhibit #1, student exhibit #2, etc.);

make three copies of exhibits, one for the parents, one for the school division, and one for the hearing officer;

send the school division and hearing officer their copies of the parents' exhibits so that they receive

this information at least five administrative days before the hearing (the school division will do the same);

decide who should testify for the parents - the witnesses should be people who know about the child and can support the parents' position;

decide what questions to ask the witnesses and write them down;

review the school division's exhibits and list of witnesses.

After the Hearing

After the hearing is completed, the hearing officer will make a decision. This decision is final unless it is appealed by the parents or the school division. This level of appeal is called a state administrative review.

Timeline

The appeal must be requested no later than *30 administrative working days* after the date of the hearing officer's decision.

The state review officer will examine the entire record of the hearing to see if the procedures followed at the hearing were proper and if the local hearing officer's decision was appropriate.

The state review officer may decide to accept additional evidence. If the parents wish to present additional evidence, they should send it to the hearing officer with a copy to the school division or the school division's attorney. The hearing officer may also allow the parties to make either written or oral arguments.

Timeline

The state review officer must reach a decision within *30 calendar days* after receipt of the request for a review unless a specific extension has been granted.

The state review officer's decision is final unless the parents or the school division file a lawsuit in a state circuit court or federal district court.

Timeline

A civil action involving an appeal from a special education due process hearing must be filed within one year of the state review officer's decision.

What Happens to the Child During the Proceedings?

During the due process hearing, state administrative review, and/or court proceedings, the child should remain in his or her present educational placement. The school division and parent may, however, agree to place the child in a different placement until the final decision is reached.

After the Final Decision

Once a final decision is reached, the school division must develop a plan of how to carry out the decision. This plan is called an Implementation Plan.

Timeline

An implementation plan must be submitted to the State Department of Education within *45 calendar days* from concluding the due process hearing unless a party appeals the decision within those 45 days.

Some Final Tips and Reminders for Parents

1. You must receive a written explanation of your procedural rights anytime the school division needs your consent or initiates or refuses to initiate a change in the identification, evaluation, placement, or provision of a free appropriate public education.

2. Be an active participant in planning your child's educational program. Attend all IEP meetings. If you receive notice of your child's IEP meeting and it is to be held at a time when you cannot attend, contact the school and ask that it be rescheduled.

3. Your personal knowledge of your child is important information. Tell the IEP team your observations about your child's behavior, likes and dislikes, situations and environment in which your child seems to work best, recent changes in your child's life, and your future plans for your child.

4. Good record-keeping is helpful. Keep copies of all correspondence between you and the school regarding your child's eligibility for special education and his/her IEP. Keep copies of the scores of all tests given to your child and the results of evaluations. Save copies of all your child's IEPs.

5. Be prepared when you attend your child's IEP meeting. Make a list of those services that you believe are necessary for your child to receive an appropriate education and present this list at the meeting. Don't forget to include:

how much and what type of contact your child needs to have with nonhandicapped students;

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any special aids or services needed to make a program or school accessible to your child;

appropriate and inappropriate types of discipline for your child;

specific areas of instruction your child needs; and

desirable classroom size.

6. If you do not understand the purpose of the tests being given to your child, or the terms being used by school division personnel in meetings, ask that they be explained to you in language that you can understand.

7. Attempt to resolve problems at the lowest level. If a disagreement over your child's education arises, try the following steps to resolve the disagreement:

discuss the problem with the teacher, a visiting teacher/school social worker or other service provider;

discuss the problem with the principal;

discuss the problem with the school division's coordinator of special education first, then the superintendent of the school division.

Appendix A: Additional Sources of Information for Parents

The Department of Education, Division of Special Education, has an area for Parent Services. One of the responsibilities of this office is to coordinate the services of Parent Resource Centers which are maintained by many local school divisions in Virginia. Each center maintains a list of parent support and advocacy groups in that area. You may request information about the Parent Resource Center nearest you by contacting:

Parent Resource Center Project
Department of Education
P.O. Box 6-Q
Richmond, VA 23216-2060
1-804-371-7581

The following is a list of additional state agencies which may be of assistance to children with disabilities and their parents:

Department for Children
805 East Broad Street, 11th Floor
Richmond, VA 23219
(804) 786-5507

Department for Deaf and Hard of Hearing
Washington Building, 12th Floor
1100 Bank Street
Richmond, VA 23219-3678
(804) 225-2570 (TDD and Voice)
(toll free, 1-800-552-7917)

Department of Health
James Madison Building
109 Governor Street
Richmond, VA 23219
(804) 786-3561
(804) 786-5214 (TDD and Voice)

Department of Mental Health, Mental Retardation and Substance Abuse Services
109 Governor Street
Richmond, VA 23219
(804) 786-3921

Department of Rehabilitative Services
4901 Fitzhugh Avenue
Richmond, VA 23230
(804) 367-0316
(toll free, 1-800-552-5019)

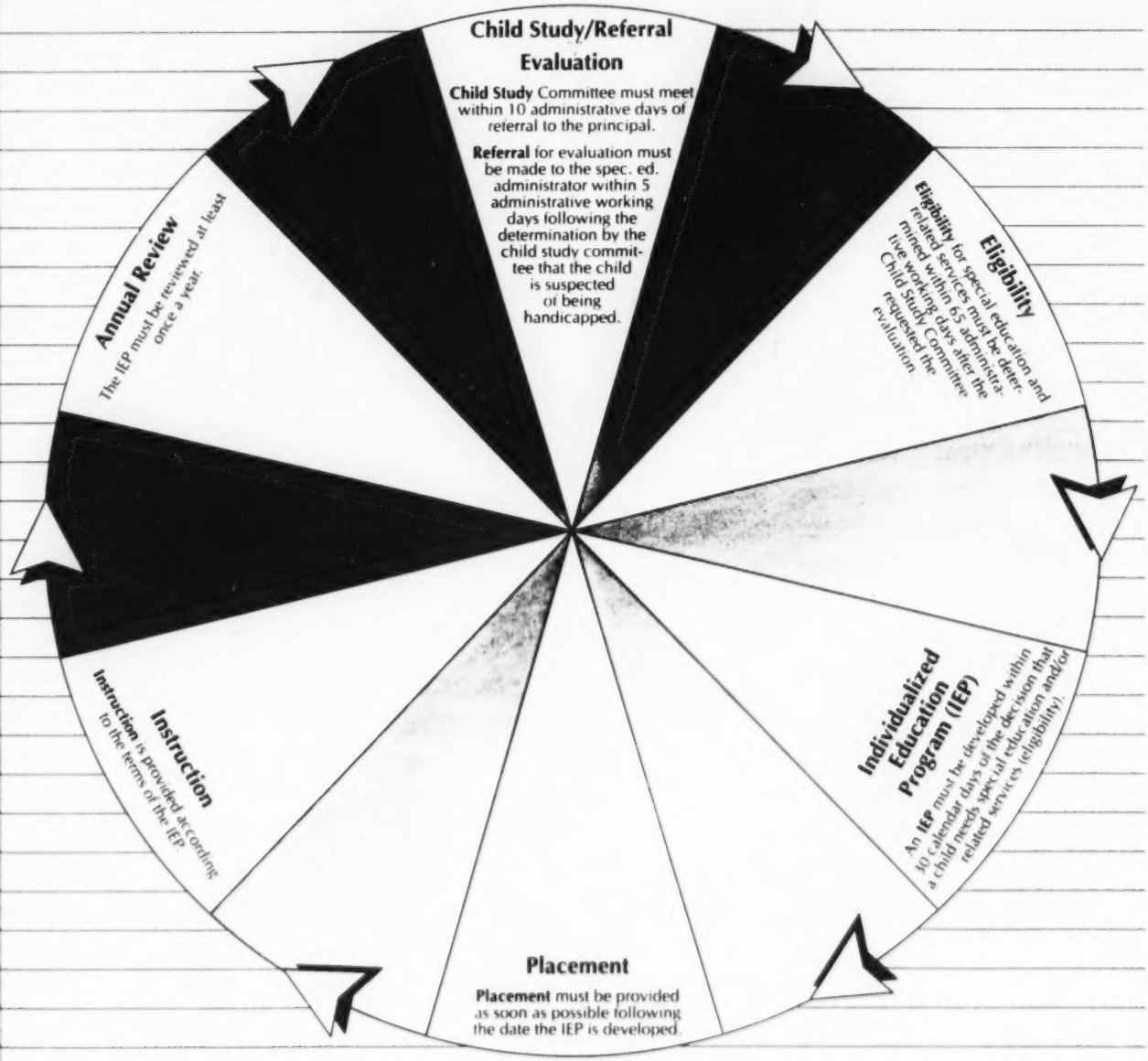
Department for Rights of Virginians with Disabilities
James Monroe Building
101 N. 14th Street, 17th Floor
Richmond, VA 23219
(804) 225-2042
(toll free, 1-800-552-3962, TDD/Voice)

Department of Social Services
8007 Discovery Drive
Richmond, VA 23229
(804) 662-9236
(toll free, 1-800-552-2131, TDD/Voice)

Department for Visually Handicapped
397 Azalea Avenue
Richmond, VA 23227-3697
(804) 371-3140, TDD/Voice
(toll free, 1-800-662-2155)

Department of Youth and Family Services
P.O. Box C 32134
6900 Atmore Drive
Richmond, VA 23261
(804) 674-3385

Appendix B: The Special Education Cycle


Child Study/Referral Evaluation
Child Study Committee must meet within 10 administrative days of referral to the principal.
Referral for evaluation must be made to the spec. ed. administrator within 5 administrative working days following the determination by the child study committee that the child is suspected of being handicapped.
Eligibility
Eligibility for special education and related services must be determined within 65 administrative working days after the Child Study Committee requested the evaluation
Individualized Education Program (IEP)
An IEP must be developed within 30 calendar days of the decision that a child needs special education and/or related services (eligibility).
Placement
Placement must be provided as soon as possible following the date the IEP is developed.
Instruction
Instruction is provided according to the terms of the IEP
Annual Review
The IEP must be reviewed at least once a year.

Appendix C: Glossary

Age of eligibility means all eligible handicapped children who have not graduated from a secondary school or completed a program approved by the Board of Education and who are mentally retarded, physically handicapped, seriously emotionally disturbed, speech or language impaired, hearing impaired, visually impaired, autistic, multihandicapped, severely and profoundly handicapped, other health impaired, or having a specific learning disability, or who are otherwise handicapped as defined by the Board of Education; who, because of such impairments, are in need of special education, whose second birthday falls on or before September 30, and who have not reached their twenty-second birthday on or before September 30.

Audiology means:

1. Identifying and evaluating children with hearing loss;
2. Determining the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;
3. Selecting and fitting an appropriate aid and evaluating the effectiveness of amplification; and
4. Counseling and guidance of pupils and parents regarding hearing loss.

Autism means a behaviorally defined syndrome; the essential functions are typically manifested prior to 30 months of age and include disturbances of:

1. Developmental rates and/or sequences;
2. Responses to sensory stimuli; and
3. Speech, language, and cognitive capacities and capacities to relate to people, events and objects.

Child means any person who shall not have reached his twenty-second birthday by September 30 of the current year.

Comprehensive Programs and Services means educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every handicapped child ages 2 to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to handicapped children and youth.

Consent means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought in his native language, or other mode of communication;
2. The parent understands and agrees, in writing, to the carrying out of the activity for which consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and,
3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked any time prior to the time limits set forth in Section 3.5.

Counseling services means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

Current Evaluation means one that has been completed within 365 calendar days or less.

Days are specified as either "calendar days" or "administrative working days". "Administrative Working Days" means days exclusive of Saturdays, Sundays, and officially designated holidays of the local school division. "Calendar Days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by

this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day not a Saturday, Sunday, or school holiday.

Deaf means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

Deaf-Blind means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

Developmentally delayed means a child below age eight who exhibits a significant delay in one or more of the following areas of development:

1. Cognitive ability
2. Motor skills
3. Social/adaptive behavior
4. Perceptual skills
5. Communication skills

Direct services means services provided to a handicapped child by the state directly, by contract, or through other arrangements.

Early identification means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

Evaluation means assessments used to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means assessments used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade, or class.

Federal financial assistance means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.

Free appropriate public education (FAPE) means special education and related services which:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Board of Education;
3. Include preschool, elementary school, middle school, or secondary school, and/or vocational education; and
4. Are provided in conformity with an individualized education program.

FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under Section 504, each recipient LEA must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met . . . ." Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

Handicapped children means those children evaluated, in accordance with these regulations, as being mentally retarded, hard of hearing, deaf, speech or language impaired, autistic, visually impaired, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, severely and profoundly handicapped, multihandicapped, or having a specific learning disability, who, because of these impairments, need special education and related services.

Hard of Hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance

but which is not included under the definition of "deaf" in this section.

Impartial hearing officer means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia.

Implementation Plan means the plan developed by the LEA designed to operationalize the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan shall include the name and position of the individual in the local school division charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

Independent Education Evaluation (IEE) means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria the public agency uses when it initiates an evaluation. An independent educational evaluation may incorporate part or all of the four core evaluations utilized for determining eligibility Virginia.

Individualized Education Program (IEP) means a written statement for each handicapped child developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents of such child, and whenever appropriate, such child, which statement shall include:

1. A statement of the present levels of educational performance;
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs;
4. The projected date for initiation and anticipated duration of the services; and
5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved.

Initial placement means the first placement in a public school, in a state operated program, or in a private school in accordance with the Act.

In-Service training means training other than that received by an individual in a full-time program which leads to a degree.

Interpreting personnel for the hard of hearing and/or deaf means personnel providing educational interpreting services for hard of hearing or deaf students meeting qualifications set forth under the section on Qualified Professionals.

Local Educational Agency (LEA) means the local school division or other public agencies responsible for providing educational services to handicapped children and youth.

Least Restrictive Environment (LRE) means that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Medical services means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

Mentally Retarded means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior

and manifested during the developmental period, which adversely affects a child's educational performance.

Multihandicapped means concomitant impairments (such as mentally retarded - blind, mentally retarded - orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

Native language as defined by section 703(a)(2) of the Bilingual Education Act when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

1. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.
2. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).

Notification means written statements in English and in the primary language of the parent's home; and oral communication in the primary language of the parent's home.

Occupational therapy means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning when functions are impaired or lost; and,
3. Preventing, through early intervention, initial or further impairment or loss of function.

Orthopedically Impaired means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contracture).

Other Health Impaired means having limited strength, vitality or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes which adversely affects child's educational performance.

Parent means a parent, a guardian, or a person acting as a parent of a child. The term "parent" means either parent, unless the LEA has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody which mother or father, the adoptive mother or father, or the legally appointed guardian or committee has custody of the child. The definition also includes persons acting in the place of a parent such as a grandmother or stepparent with whom the child lives, as well as the persons who are legally responsible for a child's welfare. The term "parent" also means a surrogate parent appointed pursuant to provisions set forth in the Regulations. A child 18 years or older may assert any rights under these regulations in his own name.

Parent counseling and training means assisting parents in understanding the special needs of their child and providing parents with information about child development.

Participating agency means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained.

Physical Education means as follows:

1. The term means the development of:
   a. Physical and motor fitness;
   b. Fundamental motor skills and patterns; and,
   c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
2. The term includes special physical education, adapted physical education, movement education, and motor development.

Physical therapy means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction; and includes the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical, or electronic measures and procedures of individuals who because of trauma, disease or birth defect present physical and/or emotional disorders. The term "physical therapy" does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes, including cauterization.

Preschool handicapped children means children (below age five) who may be identified by any of the previously defined handicapping conditions, or developmentally delayed.

Program change means any change in the way special education services are provided to a child as determined by the child's individualized education program.

Psychological Services means:

1. Administering psychological and educational tests and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
5. Planning and managing a program of psychological services, including psychological counseling for children and parents.

Public agency means the state educational agency (SEA), local educational agencies, intermediate educational units, and any other public agencies which are responsible for providing education to handicapped children.

Public expense means that a required educational and evaluation service is provided at no cost to the parent.

Public notice means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcement, handbills, brochures, and other methods which are likely to succeed in providing information to the public.

Qualified means that a person has met the State Board educational agency approved or recognized certification, licensing, registration or other comparable requirements which apply to the area in which he or she is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service, and/or Virginia Licensure requirements as designated by State law.

Recipient means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.

Recreation means:

1. Assessment of leisure function;

2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and

4. Leisure education.

Reevaluation means either completion of new assessment components in accordance with the applicable criteria or reviewing existing evaluations to determine whether the assessment material is current. Reevaluation shall be conducted for any significant change in identification or placement.

Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The terms also included school health services, social work services in schools, and parent counseling and training. Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual states. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological examiners, psychometrists, or psychologists, depending upon state standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

School health services means services provided by a qualified school nurse or other qualified person.

Screening means those processes which are used routinely with all children to help determine educational strengths and weaknesses.

Section 504 means that section of the Rehabilitation Act of 1973 which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.

Seriously Emotionally Disturbed means as follows:

1. The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

   a. An inability to learn which cannot be explained by intellectual, sensory, or health factors;

   b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

   c. Inappropriate types of behavior or feelings under normal circumstances;

   d. A general pervasive mood of unhappiness or depression; or

   e. A tendency to develop physical symptoms or fears associated with personal or school problems.

2. The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.

Severely and Profoundly Handicapped means individuals who:

1. Have primary disabilities that severely impair cognitive abilities, adaptive skills, and life functioning;

2. May have associated severe behavior problems;

3. May have the high probability of additional physical and/or sensory handicaps; and

4. Do require significantly more educational resources than are provided for the mildly and moderately handicapped in special education programs.

Significant Change in Identification or Placement includes:

1. The change in a child's academic offerings from general to special education and from special education to general education (Reevaluation, written notice and consent are required.);

2. The expulsion of a handicapped student (Reevaluation to determine whether expulsion is permissible and written notice for expulsion is required; consent is not required.);

3. The placement change which results from a change in the identification of a handicapping condition; for example, mentally retarded to learning disabled. (Reevaluation, written notice and consent are required.);

4. The change from a public school to a private day, residential or state operated program, from a private day, residential or state operated program to a public school, or to a placement in a separate facility (Reevaluation, written notice and consent are required).

Social services (Visiting Teacher/School Social Worker) means:

1. Collecting and integrating data to prepare a sociocultural assessment on a child referred for or identified with a handicapping condition.

2. Interpreting the sociocultural assessment;

3. Group and individual counseling with the child and family;

4. Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

5. Mobilizing school and community resources to enable the child to receive maximum benefit from his educational program; and

6. Offering consultation to school personnel and parents.

Special Education means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

1. The term includes speech pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under state standards.

2. The term also includes vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a handicapped child.

   a. The terms in this definition are defined as follows:

      (1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

(2) Physical education means (a) the development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports).

(b) The term includes special physical education, adaptive physical education, movement education,and motor development.

(3) "Vocational Education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

The definition of "special education" is a particularly important one under these regulations since a child is not handicapped unless he needs special education. The definition of "related services" also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services" and the child (because not "handicapped") is not covered under the Act.

Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Speech or Language Impaired means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

Speech/Language pathology includes:

1. Identification of children with speech or language disorders;
2. Diagnosis and appraisal of specific speech or language disorders;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;
4. Provisions of speech and language services for the habilitation or prevention of communicative disorders; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

State agencies means the State Departments of Education, Health, Mental Health, Mental Retardation, and Substance Abuse Services, Correction, Rehabilitative Services, Social Services, Correctional Education, and the Visually Handicapped.

Support services means implementing the comprehensive system of personnel development; recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia; and recruitment and training of surrogate parents; and public information and parent-training activities relating to a free appropriate public education for handicapped children.

Surrogate parent means a person appointed in accordance with procedures set forth to provide children who are in legal or physical custody of the state, or whose parents are not known or are unavailable, with the protection of procedural safeguards.

Testing means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.

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Transportation means:

1. Travel to and from school and between schools;
2. Travel in and around school building; and
3. Specialized equipment (such as special or adapted buses lifts, and ramps), if required to provide special transportation for a handicapped child.

Visiting teacher/school social worker (See Social services)

Visually Impaired means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

Vocational education means organized educational programs which are directly related to the preparation of individuals in paid or unpaid employment in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in such fields, and in other occupations, requiring other than a baccalaureate or advanced degree and vocational student organization activities as an integral part of the program; and for purposes of this paragraph, the term 'organized education program' means only (A) instruction (including career guidance and counseling) related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and (B) the acquisition (including leasing), maintenance and repair of instructional equipment, supplies, and teaching aides; but the terms do not mean the construction, acquisition, or initial equipment or buildings, or the acquisition or rental of land.

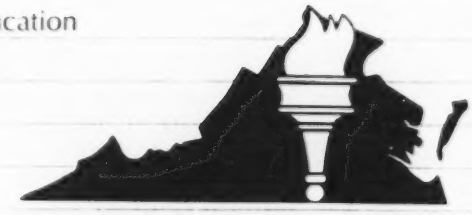
Ward of the State means all parental rights and responsibilities for the care and custody of a child have been terminated by Court order or applicable law and the child has been placed in the care and custody of the State.

Virginia Department of Education

Division of Early Childhood Education

P.O. Box 6-Q

Richmond, Virginia 23216



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